

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No. 19-1902
v.	:	
	:	Board Case Nos.
ARNOLD WALTER NURSING AND	:	22-CA-180557
REHABILITATION CENTER	:	22-CA-186982
	:	
Respondent	:	

MOTION OF THE NATIONAL LABOR RELATIONS BOARD TO
VACATE THE COURT'S ORDER DIRECTING THE FILING OF THE
RECORD AND GRANT JUDGMENT ENFORCING THE BOARD'S ORDER

To the Honorable, the Judges of the United States
Court of Appeals for the Third Circuit:

The National Labor Relations Board (the Board), by its Acting Deputy Associate General Counsel, respectfully moves that a judgment enforcing the Board's Order against Arnold Walter Nursing and Rehabilitation Center (the Company) be issued and the Court's Order directing the filing of the record be vacated. In support, the Board shows as follows:

1. On April 19, 2019, the Court docketed as No. 19-1902 the Board's application for summary entry of a judgment enforcing its Order that issued on January 11, 2019, and is reported at 367 NLRB No. 66. The Court notified the Company of that filing and advised the Company that an answer must be filed within 21 days or the Court will enter judgment for the relief requested. The

Company filed an appearance on May 6, 2019.

2. To date, the Company has not filed the required answer and the period in which to do so has expired. Thus, in addition to the basis set forth in the Board's original application for summary entry of a judgment enforcing its order, the Board is now entitled to enforcement by application of default judgment principles. As stated in the Federal Rule of Appellate Procedure 15(b)(2), and repeated in the Court's case opening letter mailed to the Company,¹ a respondent must file an answer to an application for enforcement within 21 days of its being filed with the Court or "the [C]ourt *will* enter judgment for the relief requested." Fed. R. App. P. 15(b)(2) (emphasis added). *See Trafford Distribution Ctr. v. NLRB*, 478 F.3d 172, 182 (3d Cir. 2007).

3. The Board further requests that the Court's Order of April 22, 2019, directing the Board to file the record or certified list by June 3, 2019, be vacated. Under Federal Rule of Appellate Procedure 17(a), the Board is relieved from filing the record with the Court when the respondent fails to file an answer to the Board's application. *See* Fed. R. App. P. 17(a) ("The agency must file the record with the circuit clerk within 40 days . . . unless the respondent fails to answer . . ."). *See also* Advisory Committee Note, Fed. R. App. P. 17(a) ("Forty days are allowed in

¹ "An Answer to the Application for Enforcement must be filed within 21 days . . ." April 22, 2019, Case Opening Letter from the Clerk's Office to the Company.

order to avoid useless preparation of the record or certified list in cases where the application for enforcement is not contested.”). Additionally, there are no material issues of fact involved in this summary case. Preparation of a record in these circumstances would serve no purpose.

Wherefore, in order to conserve the time and resources of the Court and parties, the Board respectfully requests that the Court permit it to forego filing of the record and certified list, and enter judgment enforcing the Board’s January 11, 2019 Order in full.

/s/ David Habenstreit
David Habenstreit
Acting Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dated in Washington, D.C.
this 23rd day of May, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2019, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system. I further certify that the foregoing document was served on all those parties or their counsel of record through the CM/ECF system.

/s/ David Habenstreit

David Habenstreit

Acting Deputy Associate General Counsel

National Labor Relations Board

1015 Half St., S.E.

Washington, D.C. 20570

Dated at Washington, D.C.
this 23rd day of May, 2019

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 27(d), the Board certifies that this motion contains 524 words of proportionally-spaced, 14-point type, and the word processing system used was Microsoft Word 2010.

/s/ David Habenstreit
David Habenstreit
Acting Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dated at Washington, DC
this 23rd day of May 2019